

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SERENA TURNER,

Plaintiff,

v.

DECISION and ORDER
11-CV-953S

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Plaintiff has moved to have counsel appointed to represent her in this civil matter. (Docket No. 12.) For the reasons stated below, the motion is denied without prejudice to renewal.

The factors to be considered in ruling on a motion for the appointment of counsel include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." Cooper v. A. Sargent Co., 877 F.2d 170, 172 (2d Cir. 1989).

The Court must consider the issue of appointment of counsel carefully, of course, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." Cooper, 877 F.2d at 172. Therefore, the Court must first look to the "likelihood of merit" of the underlying dispute, Cooper, 877 F.2d at 174, and "even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the . . . claim are thin and his chances of prevailing are therefore poor." Carmona v. United States Bureau of Prisons

243 F.3d 629, 632 (2d Cir. 2001) (denying counsel on appeal where petitioner's appeal was not frivolous but nevertheless appeared to have little merit).

Plaintiff seeks appointment of counsel on the sole basis that she cannot afford to retain an attorney. This alone is an inadequate showing that the appointment of counsel is warranted. Moreover, Plaintiff's case appears to have significant weaknesses, based on the findings below. Accordingly, Plaintiff's request for the appointment of counsel is denied at this time.

To assist plaintiff in pursuing her case *pro se*, the Clerk of Court is directed to send her a copy of the Court's booklet entitled Pro Se Litigation Guidelines.

SO ORDERED.

Dated: August 23, 2012
Buffalo, New York

William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court